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EXAMINER

NGUYEN, TAN D

ART UNIT PAPER NUMBER

3629

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

This office action replaces the office action mailed on 6/1/06 due to complete disclosure of the McBREARTY's reference (Article 12/1986).

#### ***Response to Amendment***

The amendment filed 4/25/06 has been entered. Claims 58-72, 75-94, 97-107 are pending. Claims 1-57, 73-74, 95-96 have been canceled.

#### ***Response to Arguments***

1. Applicant's arguments, see response, filed 4/25/06, with respect to the 103 rejections of claims 58-107 have been fully considered and are persuasive. The 103 rejections of claims 58-103 have been withdrawn. The finality status of the application has been withdrawn due to new rejections.

#### ***Response to Amendment***

2. The amendment filed 12/16/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

1) Independent method claim 58,

b) line 16, "updating, according to instructions from the donor, one or more virtual plaques displayed on one or more web pages to recognize new donors".

Similarly, dependent claim 104 (same (b) part above), independent system claim 82, and independent product claim 102, which have similar limitations as in independent method claim 58 above.

Art Unit: 3629

The examiner has scanned the application for these above language but cannot find them. Applicant is required to cancel the new matter in the reply to this Office Action.

Applicant's comment with respect to the support of part (a) is persuasive and the objection has been withdrawn. However, as for the applicant's response that the support is found in another related case, paragraph [0051] of U.S. Patent Application Serial no. 09/740,761, and incorporated by reference in paragraph [0004] of the present application, this is not persuasive because there is no support found in this application.

#### ***Claim Status***

Claims 58-72, 75-81, 106 (method<sup>2</sup>), 82-94, 97-101, 107 (system), 102 (product), 103-105 (method<sup>1</sup>) (total of 49 claims) are active and are rejected as followed. Claims 1-57, 73-74, and 95-96 have been canceled.

#### ***Double Patenting***

3. **Claims 58-72, 75-94, 97-107 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-114 of copending Application No. 09/740,761.** Although the conflicting claims are not identical, they are not patentably distinct from each other because current claim 58 reads over claim 1 of 09/740,761.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 3629

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors (5). In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

Art Unit: 3629

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. **Claim 103 (method<sup>1</sup>) is rejected under 35 U.S.C. 103(a) as being unpatentable over (1) COSTIN IV, et al (US 2002/0049816) in view of (2) McBREARTY (Article 12/1986).**

**As for independent method<sup>1</sup> claim 103**, COSTIN, IV et al discloses a method for conducting a fundraising campaign by an organization over a wide-area network comprising the steps of:

a) hosting a website (Fig. 1 (26) including a plurality of linked web pages, the website providing information about the fundraising campaign and soliciting potential donors to make a charitable contribution to the fundraising campaign {see Fig. 2, [0006], [0066 "software and architecture associated ... may be internal to the sponsor or cause}};

b) providing a link to a campaign web page of a 2<sup>nd</sup> entity (business or e-business) which has the ability to send one or more email messages to 3<sup>rd</sup> parties (customers, employees, etc.), the campaign web page having the name and personal campaign of the solicitor {[0006, 0007], Fig. 3}; and

Art Unit: 3629

c) receiving a charitable contribution from a donor via a separate website (web page) maintained by a fundraiser service provider {see Figs 3-6, [0009]} or web page by sponsor/e-business {see Fig. 6} or web page by a cause/charity organization {see Fig. 3 "*Little League*"}. COSTIN, IV et al fairly teaches the claimed invention except for the 2<sup>nd</sup> entity web page is of business or e-business and not a personal donation page. Note that on [0007], COSTIN, IV et al discloses the concept of e-mail networking component to be viral as fundraiser can send out an indefinite amount of requests supporting the cause they care about, therefore, it would have been obvious for the e-business to send out email messages to employees to ask them to visit the e-business website where they are presented with a link to a campaign web page {see [0009]}. As for the limitation of registering by a solicitor on a website, this is inherently included and/or fairly taught in Fig. 2, [0070, 0080]}.

Note that on [0010], COSTIN, IV et al discloses the setting up of a campaign web page of a 3<sup>rd</sup> entity (customers/employees/donors) whereby they can become individual fundraiser with a personalized campaign page and able to send email messages which includes link to a campaign page of the organization or the 2<sup>nd</sup> entity (e-business/sponsor) or fundraiser service provider. It would have been obvious to modify the teachings of COSTIN, IV et al by creating a similar campaign web page for the 3<sup>rd</sup> entity (individual fundraiser) having the name and personal campaign goal similar to 2<sup>nd</sup> entity (step b above) as mere duplicate of similar campaign web page for other similar entity (fundraisers) or creating other similar campaign web page for other similar entity to obtain similar results, absent evidence of unexpected results. Clearly, having a

Art Unit: 3629

campaign web page with showing well known campaign parameters, such as name of the project, goal, deadline, responsible parties etc. for every fundraiser is more effective/better marketing tools but the cost to create and maintain effectively the websites of many entities involved will be extremely high. So this is a balance between cost and profit (donation or contribution collected) but the concept of creating a personalized campaign page for a fundraiser is taught in COSTIN, IV et al and would have been obvious to implement for any entity, e-business or individual, if the cost is justified. Note, that no evidence has been submitted to show why it's not obvious to create a personal campaign web page for individual fundraiser in view of web page for e-business/sponsor.

Note also in [0010], COSTIN IV, et al discloses the setting up a personalized campaign page and sending e-mails to anyone they choose and wherein the e-mail message including a link to the campaign page or e-business web site whereby the donors can make donation. Since the teaching of setting up of a campaign page containing (a) name and (b) goal on the web page is taught in Fig. 3 for charity organization or Fig. 6 for business-sponsor, the practice of this teaching for the personal donation page of the solicitor or individual would have been obvious to an artisan as mere applying similar teaching to other similar application to achieve similar results, absent evidence of unexpected results. Therefore, COSTIN IV, et al fairly teaches the claimed invention except for carrying the last step (c.) of making a donation (charity contribution) via the personal donation page.

In another method for raising funds, McBREARTY discloses one of the key variable for fundraising campaign is developing a personal relationship with the donor whereby the appeal is “be an intimate part of my campaign” and not “please send money” {see page 72, element (3), page 75, 1<sup>st</sup> full paragraph}. The theme is on “customer service” approach to fund raising campaign which both increases the campaign cost, but more dramatically increases the loyalty of, and total giving from the donors {see page 75, 1<sup>st</sup> paragraph}. It would have been obvious to modify the fundraising campaign of COSTIN IV, et al creating a personal donation page whereby donor can make donation to the personal donation page vs. sponsor or charity web page as taught by McBREARTY since developing a personal relationship and be an “intimate part of my campaign” with the donor” is a key parameter to successful fundraising or increasing the giving dramatically. Surely, having a personal page with name and personal campaign goal of the solicitor whereby the donor or friends of the solicitor can donate through the personal page fits the goal of McBREARTY whereby the solicitor can develop a personal relationship with the donor. In other word, the donor is giving to his friend/family member web page to help his friend or family member to achieve his/her own fundraising campaign goal or giving because of relationship since friend likes to help friend. If the donor donates via the system of COSTIN IV, et al, i.e. through a website by a business sponsor organization or charity organization or service provider, wherein the donor does not normally know these organizations, there is likely less chance to give because there is no personal relationship involved, as taught by McBREARTY above.

Art Unit: 3629

Note also that COSTIN, IV et al also teaches the steps of:

d) displaying one web page about the donor (donor highlights) and

e) displaying fundraising campaign statistics/results (or tracking performance)

such as bringing up to-date (or updating) campaign statistics, i.e. "*to-date donation amount*", "goals (number of donors, dollar amount (\$) by stages, etc.",

{see Fig. 6, or 12 "*Donation-to-date*:" or "*To Date*:", or

Fig. 13, last paragraph "*login and track the progress of your campaign! See who has donated and how the progress your campaign has contributed to the overall Coolsavings/Y-ME online fundraising campaign.*" or Fig. 20, right column, [0082]}.

Therefore, a combination of ) COSTIN IV, et al (US 2002/0049816) in view of (2) McBREARTY would produce a personal donation page with the personal campaign goal and progress/status information so the donor can see the progress/status of the campaign and donate to the campaign. Also, the updating of any other fundraising campaign statistics/results such as the goals cited above [0081], number of donors, who are the donors, dollar amount (\$) by stages, donor's amounts, etc., are inherently included (see Fig. 13) or would have been obvious as mere updating other similar features. {see also Fig. 1a, 0006, 0007, 0009, 0010, 0019, 0065, 0067, 0070, 0071, 0072, 0075, 0082, 0083}.

9. Dependent claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over COSTIN, IV et al / McBREARTY as applied to claim 103 above, and further in view of (3) SMITH et al (Article "The Impact ... Charitable marketing effectiveness, Summer1996").

The teaching of COSTIN, IV et al is cited above.

In a similar method of direct **marketing appeals** on **charitable (fundraising) marketing effectiveness**, (2) SMITH et al cite several relevant charitable **appeals** or **factors** or **strategies**, i.e., an **increase in size** (amount) of donation for this year relative to last year by:

1) **exposure** (or **display**) to a list of other donors increases the response rate but not the average gift, however, when

2) **size** of others' donations was included in the list, the average donation increases {see page 5, 5<sup>th</sup> paragraph} for example (by the examiner's interpretation):

LIST

	<u>Donors</u>	<u>Amount Donation (\$)</u>
1.	Jane Doe	200.00
2.	Participant 2.	100.00
3.	Participant 3.	125.00

(etc., see page 5, 5<sup>th</sup> paragraph).

It would have been obvious to modify the fundraising campaign of COSTIN IV, et al by including the above **strategies** (1) and (2) for the benefit of increasing the size of donation for this year relative to last year in the campaign by: (g) listing of donors, top-three or five list, size of donations in the list, etc. as taught by SMITH et al for the benefits (2) of increasing (1) the response rate and (2) average donation or increasing the size of donation this year as compared to last year. As for the term plaque (or showing of a list on the website), this read over the showing of the list of the donors and

Art Unit: 3629

size of donations as taught by SMITH et al when appear on the website of COSTIN IV et al. As for the term virtual (or cyber or on Internet or web), this is taught in COSTIN IV et al and inherently included when combining COSTIN IV et al and SMITH et al. As for the limitation of "honoring the donor", this is inherently included when showing the list above and inherently included in the teachings of COSTIN IV et al /SMITH et al. Note that SMITH et al fairly discloses the concept of displaying the list of donors, their positions on the list. Note that rearranging of the list items to show individual ranks, i.e, (1<sup>st</sup> for highest amount of donation, last for lowest amount of donation), would have been obvious to a person of skill in the art as mere equivalent/similar arrangement for clarity or identification purpose. Note that the concept of presenting donation figures in order from low to high for clarity and easy identification is also taught in (3) above.

As for the difference between the communication means for carrying the campaign, digital (website) vs. direct mail in COSTIN IV et al and SMITH et al, this is not critical since we deal with campaign strategies and would have been obvious to implement these strategies in the wide-area network campaign of COSTIN IV et al or regardless of the types of communication means. As for the updating function of the list or virtual plaque, this is well known campaign parameter as taught by COSTIN IV et al on Fig. 6 or 12 "To Date." or Fig. 13 above and would have been obvious to implement this known parameter for the listing of the donors in view of the teaching of SMITH et al if desired.

**10. Dependent claim 105 is rejected under 35 U.S.C. 103(a) as being unpatentable over COSTIN, IV et al / McBREARTY as applied to claim 103 above,**

Art Unit: 3629

**and further in view of (3) Article “BT: Sheryl Gascoigne ...Swimathon ’99 (hereafter as “BT Article”) or (4) Article “Leukaemia Busters Fundraising week, June-July 1999 (hereafter as “LEUKAEMIA Article”) or (2) SMITH et al (Article “The Impact ... Charitable marketing effectiveness, Summer1996”).**

The teachings of COSTIN, IV et al / McBREARTY and SMITH et al are cited above.

In another similar charity fundraising campaign, (3) BT Article is cited to teach the types of participation in a fundraising campaign such as an individual, as a family group, as a group of friends or as **teams competing** against each other to raise money for the campaign and winning the coveted BT Trophies (**prize**), which is top fundraisers **winning** a holiday of a lifetime to the La Manga Club Resort in Spain, awarded for (1) speed of performance or (2) fundraising success (raising the most money) {see page 1 and 2, notes (1) or (2)}.

In another similar charity fundraising campaign, (4) LEUKAEMIA Article is cited to teach the types of participation in a fundraising campaign such as an individual, as a family group, as a group of friends or as **teams competing** against each other to raise money for the campaign {see page 5, left column}. It would have been obvious to modify the teachings of COSTIN IV et al (or COSTIN, IV et al /SMITH et al for “virtual plaques” limitation) by changing the type of participation to forming teams to participate in the campaign and compete with each other to raise money as taught by BT Article or LEUKAEMIA Article as mere using other similar participation types or alternatives or options. Furthermore, it’s well known that team competition normally improve the

Art Unit: 3629

morality and people involvement as compared to individual type but at the expense of inconvenience to get all the people together. As for the teaching of step (j), the displaying of the participant/donor (team) positions (ranks) on the plaque (list), this is fairly by SMITH et al as shown above. As for the term "ranks" which is equivalent to the term "position" relative to each other, this has been discussed in the previous paragraph below the "LIST". Furthermore, since BT Article teaches the awarding of the "top fundraiser" with winning prize, it would have been obvious to modify the teachings of COSTIN IV et al / McBREARTY / SMITH et al /BT Article by arranging the list of donor in ranking position, top fundraiser to bottom fundraiser, to effectively monitor or track the campaign performance effectiveness. Alternatively, Official notice is taken that the step of displaying (showing) participant (individual or team) position/rank periodically in a competition event (campaign/season) to track progress (performance) of the participant is old and well known (see NFL (team position/rank after each game), LPGA, Tour De France (individual positions, and team positions/ranks after each stage). Therefore, it would have been obvious to implement the displaying of the participant (team) ranks in COSTIN IV et al / McBREARTY / SMITH et al /BT Article or LEUKAEMIA Article in order to track the progress of the participant.

11. **Claims 58-72, 75-81 (method<sup>2</sup>), 82-94, 97-101 (apparatus<sup>2</sup>), 102 (program<sup>2</sup>) are rejected under 35 U.S.C. 103(a) as being unpatentable over COSTIN IV, et al in view of McBREARTY, SMITH et al (Article "The Impact ... Charitable marketing effectiveness, Summer1996") and (4) Article "BT: Sheryl Gascoigne ...Swimathon**

Art Unit: 3629

'99 (hereafter as "BT Article") or (5) Article "Leukaemia Busters Fundraising week, June-July 1999 (hereafter as "LEUKAEMIA Article").

As for independent method<sup>2</sup> claim 58, which has the same limitations of the combinations of claims 103-105, they are rejected for the same reasons set forth the rejections of claim 105, 104 and 103 above (to minimize copy of the lengthy rejections above).

As for dep. claims 59-60 (part of 58), which deal with well known fundraising campaign parameter, i.e. contacting 3<sup>rd</sup> party to provide more information about participants such as a team participating in a competition associated with the campaign, this is non-essential to the scope of the claimed invention and would have been obvious in view of the teachings of COSTIN IV et al /SMITH et al and BT Article or LEUKAEMIA Article above, especially in COSTIN IV et al [0010, 0019].

As for dep. claim 61 (part of 58), which deals with well known fundraising campaign parameter, i.e. tracking the progress of the campaign by providing real time status of fundraising campaign, this is taught or inherently included in COSTIN IV et al on Fig. 6, "**Donation-to-date**", "**To Date:**", Fig. 12, or [0063 "**tracking donor's**", "**instantaneous, easier to track**", "funds typically are received **immediately**", [0072], [0081 "**tracking information related to fundraising campaign**"] or [0082 "**dollar amount by stages**"] }. Alternatively, it would have been obvious to provide a real time status (today, to-date) of the campaign in the report to effectively track the progress of the campaign as taught by COSTIN IV et al above.

**As for dep. claims 62-67** (part of 58), which deal with well known fundraising campaign parameter, i.e. joining, forming a team or recruiting new members, these are none-essential to the scope of the claimed invention and are fairly taught in BT Article or LEUKAEMIA Article as cited above.

**As for dep. claims 68-72** (part of 58), which deal with well known fundraising campaign parameter, i.e. the campaign including other special athletic event, entertainment event, or other community events, these are none-essential to the scope of the claimed invention and are fairly taught in COSTIN IV et al Figs. 7-9, [0066, 0086] or BT Article or LEUKAEMIA Article as cited above.

**As for dep. claim 75** (part of 58), which deals with well known fundraising campaign parameter, i.e. providing a personal web page with link and email for a solicitor, these are fairly taught in COSTIN IV et al [0010, 0012, 0013].

**As for dep. claim 76** (part of 58), which deals with well known fundraising campaign parameter, i.e. wherein the report includes donor's benefits such as tax related information, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al Fig. 5, [0073, 0080].

**As for dep. claim 77** (part of 58), which deals with the type of wide area network, the Internet, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al Fig. 1a, Fig. 2, [0007].

**As for dep. claims 78-80** (part of 58), which deal with well known fundraising campaign parameter, i.e. the type of the organization, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al [0003, 0012].

**As for dep. claim 81** (part of 58), which deals with well known fundraising campaign parameter, i.e. a person conducts the campaign, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al [0084 “individual or student”].

**As for dep. claim 106** (part of 58), which deals with well known fundraising campaign parameter, i.e. providing one or more reports on the website about the campaign status, etc., this is taught in COSTIN, IV et al Fig. 3, 20.

Alternatively, the various adjustments of the fundraising parameters as shown in the dependent claims 59-81, and 106 are considered as optimizing fundraising operating conditions or result effective variables /parameters and the optimizing of result effective variables is considered as routine experimentation to determine optimum or economically feasible reaction conditions and would have been obvious to the skilled artisan, absent evidence of unexpected results. In re Aller, 105 USPQ 233. Moreover, they are fairly taught in COSTIN IV et al [0082, 0084, 0086, especially 0087 “*other embodiments and uses will be apparent to the skilled artisan*”].

**As for independent system claim 82**, which is the system to carry out the independent method claim 58 above, it's rejected over the system (means for) to carry out the method claim 58 (step of) as rejected by COSTIN IV, et al in view of McBREARTY, SMITH et al and (4) BT Article or (5) LEUKAEMIA Article as indicated above. See also COSTIN, IV et al [0066], for putting the software and architecture internal to the sponsor or cause for seamlessly connecting.

Art Unit: 3629

**As for dep. claims 83, 86-89, 84-85, 90-94, 97-101** (part of 82), which have the same limitations as in dep. claims 59, 62-64, 67, 60-61, 68-81 (part of 58) above, they are rejected for the same reasons set forth in dep. claims 59, 62-64, 67, 60-61, 68-81 above.

**As for independent program product claim 102**, which is the program file to carry out the independent method claim 58 above, it's rejected over the program file to carry out the method claim 58 (step of) as rejected by (1) COSTIN IV, et al in view of (2) McBREARTY, (3) SMITH et al and (4) BT Article or (5) LEUKAEMIA Article as indicated above.

Art Unit: 3629

***Exhibit***

**12.** The Exhibit A filed on 4/20/06 is in sufficient to overcome the 103 rejections of claims 58-72, 75-94, 97-107 over COSTIN IV, et al /McBREARTY or SMITH et al and (4) BT Article or (5) LEUKAEMIA Article.

Applicant's comment on page 13 that the program "Friends Asking Friends" innovation to Salvation Army Staff is not persuasive because this program is similar or taught or appears to be similar to COSTIN IV, et al [0009], [0019] "Friend-to-Friend Fundraising System". Moreover, this is merely objective evidence not supported by actual proof. See MPEP 716.01 (c.) [R-2]. Furthermore, any secondary evidence must be related to the claimed invention. On page 2, under "what we did right", list the 4 items appear to contribute to the success on the previous page, but items (1)-(4) are not in the claims.

No claims are allowed.

Art Unit: 3629

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

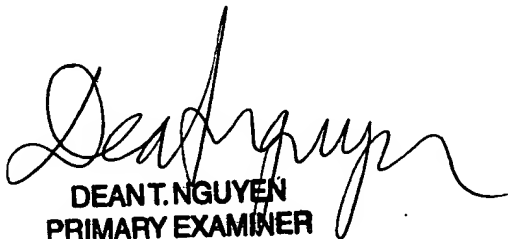
In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss can be reached at (571) 272-6812.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
June 28, 2006

  
DEANT.NGUYEN  
PRIMARY EXAMINER